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# Viatical Settlement

## *A Guide for Employees*

*This pamphlet  
provides the employee  
and annuitant  
with an orientation  
of benefits under  
Viatical Settlements*

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## **WHAT IS VIATICAL SETTLEMENT?**

Viatical settlement is the "sale" (or assignment) of someone's life insurance coverage to a third party, known as a viatical settlement firm (VSF), in exchange for cash. The percentage of the face value that the VSF will offer varies, somewhere in the range of 60 percent to 85 percent of the total face value of the insurance coverage. VSFs will generally accept assignment from individuals with defined life expectancies which vary with each VSF. If the insured assigns 100 percent of his/her insurance to a VSF, the VSF will receive the full life insurance death benefit upon the person's death.

The difference between what the person receives in cash from the VSF and the full face value of the insurance is the VSF's revenue. The purchase price paid for the policy is dependent primarily on the person's life expectancy and the current cost of funds. The VSF's costs include interest expenses on the money paid to the person, underwriting expenses, general operating expenses, etc. The VSF tries to cover these costs from the revenue earned on each transaction.

VSFs will pay a smaller percentage of the face value to a person with a longer remaining life expectancy. This accounts for the time value of money. For example, if someone has 24 months to live, they will receive a smaller percentage of the face value of their insurance than someone with only 6 months to live. This is because the firm will have longer to wait to receive the full face value of the person's insurance upon their death.

## **HOW DOES THIS HELP TERMINALLY ILL FEDERAL EMPLOYEES AND ANNUITANTS<sup>1</sup>?**

Effective October 3, 1994, Public Law 103-336 amended the life insurance law to allow all employees and annuitants enrolled in the Federal Employees' Group Life Insurance (FEGLI) Program to assign their life insurance to another person(s), firm(s) or trust(s). Previously, the right to assign life insurance was limited to Federal judges. Today, terminally ill Federal employees and annuitants enrolled in the FEGLI Program can assign their insurance to a VSF in exchange for cash, if they so desire.

This can help terminally ill employees and annuitants by giving them an influx of cash (which otherwise would have been paid to their beneficiary(ies) only after their death). The employees and annuitants can use the money to finance needed medical care and otherwise improve the quality of their final days of life.

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<sup>1</sup>For the purposes of these questions and answers, the term "annuitant" also refers to compensationers who are continuing their FEGLI coverage as compensationers while in receipt of compensation payments from the Department of Labor's Office of Workers' Compensation Programs.

## **HOW DO VIATICAL SETTLEMENTS DIFFER FROM THE NEW LIVING BENEFITS PROVISIONS OF THE FEGLI PROGRAM?**

The FEGLI Living Benefits Act (Public Law 103-409) is effective July 25, 1995. Under this new provision of the FEGLI Program, Basic benefits paid before death will be available if the employee or annuitant has a life expectancy of 9 months or less. So, in advance of July 25, assignment of FEGLI coverage to a VSF may be a terminally ill person's only opportunity to receive cash in advance of death. Also, the FEGLI Living Benefits Act applies only to Basic life insurance. Assignment applies to Basic and Option A and Option B. Therefore, even after the FEGLI Living Benefits Act becomes effective, a VSF is the only source of cash in advance of death for Basic and Option A and Option B.

## **WHAT IS THE DIFFERENCE BETWEEN ASSIGNING BENEFITS AND DESIGNATING A BENEFICIARY?**

Assigning benefits transfers ownership of the employee/annuitant's FEGLI coverage to the assignee(s). The insured no longer has control over his/her insurance coverage and can no longer designate beneficiaries. Assignment is irrevocable. Designating a beneficiary simply declares to whom payment of death benefits should be made. The insured retains ownership of the insurance and retains the right to change or cancel the designation at any time. A designation of beneficiary is revocable.

## **WHAT IF EMPLOYEES/ANNUITANTS COMPLETE A DESIGNATION OF BENEFICIARY AFTER THEY HAVE ASSIGNED THEIR INSURANCE?**

Upon a valid assignment of FEGLI insurance coverage, all Designations of Beneficiary completed by the insured, both before and after the effective date of the assignment, become void.

## **CAN ONLY PART OF AN EMPLOYEE'S OR ANNUITANT'S FEGLI COVERAGE BE ASSIGNED – FOR EXAMPLE, ONLY BASIC OR ONLY OPTION A?**

No. Either all of it must be assigned or none of it. But it doesn't all have to be assigned to the same person or firm. Assignments must be made in percentages of the total insurance (e.g., 50 percent of the total to one person/firm, 25 percent to another and the remaining 25 percent to another; or 100 percent to one person/firm, etc.) All percentages must add up to 100 percent. Assignments cannot be made so that Basic is assigned to one person/firm, Option A to another, etc.

Therefore, terminally ill employees and annuitants **may** be able to negotiate with a VSF to accept assignment of only a percentage of the total of their Basic, Option A and Option B in exchange for cash, and assign the remaining percentage to someone else, perhaps a family member.

Obviously, they will receive less cash from the VSF than if they assigned 100 percent to the firm. However, this does provide a mechanism to "retain" a death benefit for a survivor, if the VSF agrees to it.

It is also possible for the VSF to designate the employee/annuitant's estate or a family member as a beneficiary for a portion of the death benefit. However, the employee or annuitant must understand that designations of beneficiary can be revoked without knowledge or consent of the designee. If the insurance is assigned to the firm, the firm (like any assignee) may designate whomever it chooses and may change this designation at any time. Depending on the circumstances, the employee or annuitant may wish to enter into a private agreement with the firm wherein the firm promises to keep the designation valid. However, any contractual arrangements are private negotiations between the employee/annuitant and the VSF and do not have any effect on the validity of a FEGLI Program designation.

### **WHAT ARE THE OPTIONS AFTER JULY 25, 1995?**

After July 25, 1995, terminally ill employees and annuitants enrolled in the FEGLI Program who wish to receive a pre-death benefit will have a choice --

- They can assign their Basic and all Optional insurance (except Option C) to a VSF in exchange for approximately 60-85 percent of the face value of that coverage. NO death benefit would be payable to their survivors. The VSF would receive the entire death benefit (unless they negotiate to assign only a percentage of their coverage, as explained above).

**OR**

- They can elect FEGLI Living Benefits. Employees must choose either --
  - full Living Benefits (their full Basic benefit, discounted by an approximately 6 percent factor, which does not vary by life expectancy, to account for lost interest to the FEGLI Program; the Program will not charge a profit factor)

**OR**

- partial Living Benefits (a percentage of their Basic benefit, in a multiple of \$1,000, discounted as described above). They cannot elect the remaining portion of their Basic benefit as a Living Benefit later. They may only elect Living Benefits once. The remaining portion of their Basic benefit will become payable as a death benefit.

Annuitants who wish to elect Living Benefits must elect the full amount of their Basic benefit (discounted as described above). Annuitants are not eligible for partial Living Benefits.

If employees/annuitants elect Living Benefits, their Optional insurance, if any, is unaffected and is available for payment to their beneficiary(ies) upon their death.

Employees and annuitants may also elect Living Benefits and then assign the remainder of their insurance.

### **WHY WOULD AN EMPLOYEE OR ANNUITANT WANT TO CHOOSE VIATICAL SETTLEMENT AFTER JULY 25, 1995?**

After July 25, 1995, viatical settlement may be a good choice for terminally ill employees and annuitants with MORE than 9 months to live, or those who wish to receive cash based on the face value of their Basic AND Optional coverages. Remember, the FEGLI Living Benefits provision will only apply to Basic, NOT the Optional coverages. Assignment applies to ALL of the employee/annuitant's coverage (except Option C, which cannot be assigned). Therefore, if terminally ill employees or annuitants are enrolled in Option A and/or Option B, they may be able to receive more money while they are living from a VSF than they would receive from the FEGLI Program by electing Living Benefits.

For example, suppose an employee/annuitant's Basic coverage is \$40,000 and he/she has three multiples of Option B (\$114,000). Suppose the VSF pays 60 percent of the face value of the Basic plus Option B. Sixty percent of the total (\$40,000 + \$114,000) is \$92,400. This is still greater than a full Living Benefit (approximately 95 percent of \$40,000, which is \$38,000).

### **WHAT SHOULD A TERMINALLY ILL EMPLOYEE OR ANNUITANT CONSIDER BEFORE MAKING SUCH A DECISION TO RECEIVE MONEY IN ADVANCE OF THEIR DEATH?**

Terminally ill employees and annuitants should assess their financial needs to determine whether it makes sense to receive money against their life insurance coverage. Just because these cash benefits are available does not mean they are appropriate for each terminally ill employee or annuitant.

If terminally ill employees and annuitants wish to have access to cash benefits before July 25, 1995, then they should consider assigning their coverage to a VSF. Depending on their life expectancy, assignment to a VSF may be their only opportunity to obtain a pre-death benefit. Once they have made an assignment, they can never change or revoke it, even if their circumstances change. If they elect additional insurance or if their salary increases (applicable only to employees), the additional coverage is automatically covered by the existing assignment.

Assuming they do not wish to have access to cash benefits before July 25, 1995, they need to consider how large of a residual benefit, if any, they wish to leave for their survivors upon their death.

If they choose assignment, ALL of their insurance (except Option C) must be assigned (although, as stated previously, it does not all need to be assigned to the same person or firm -- the employee/annuitant may negotiate with the VSF to accept assignment of only a percentage of the

life insurance so that the remaining percentage can be assigned to one or more survivors, or they may negotiate an agreement whereby the VSF agrees to complete a designation of beneficiary in favor of one or more survivors for part of the assigned death benefit).

If they choose FEGLI Living Benefits, they will still retain all of their Optional insurance, which will be payable to their designated beneficiary(ies) or other survivor.

Terminally ill employees (but not annuitants and compensationers) have the option of electing only a **portion** of their Basic benefit as a Living Benefit (a multiple of \$1,000). In this way, they can retain a residual death benefit payable to their beneficiaries/survivors. In addition, benefits will be payable upon their death for any Optional insurance they may have.

Terminally ill employees and annuitants also need to consider their projected life expectancy. VSFs will generally accept assignment from individuals with life expectancies of greater than 9 months. FEGLI Living Benefits will only be available to individuals with life expectancies of 9 months or less.

### **ARE THESE BENEFITS TAXABLE?**

No. Living Benefit payments and qualified payments from VSFs received after December 31, 1996, are not subject to Federal income tax. (See BAL 96-206.)

### **WHO PAYS THE PREMIUMS FOR THE FEGLI COVERAGE IF IT HAS BEEN ASSIGNED TO A VSF?**

The FEGLI Program requires that employees and annuitants continue to pay FEGLI premiums through withholding from their paycheck or annuity, even after the employee or annuitant has assigned his/her insurance to a VSF or, for that matter, to anyone else. They cannot cancel the withholdings. Some VSFs will offer to assume payment of the premiums for the remainder of the employee's or annuitant's lifetime. However, there is no mechanism for the Federal Government to accept premiums directly from a VSF.

As an alternative, employees and annuitants may attempt to negotiate an agreement with the VSF that premium expenses payable for their remaining life expectancy be added to their settlement payment from the firm at the time of closing the transaction. This is a private negotiation between the employee/annuitant and the firm.

### **WHO PAYS THE PREMIUMS FOR THE FEGLI COVERAGE IF LIVING BENEFITS HAVE BEEN ELECTED?**

If full Living Benefits are elected (the only option available to annuitants), then premiums for Basic stop. If partial Living Benefits are elected (only available to employees), then premiums for Basic are prorated depending on the dollar value of the remaining Basic benefit. In both cases, premiums for Optional insurance remain unchanged.

## **HOW WOULD A TERMINALLY ILL EMPLOYEE OR ANNUITANT LOCATE A VSF?**

Support groups for victims of terminal illnesses such as cancer and AIDS generally can help locate such firms. In addition, financial planners, estate planners, social workers, and physicians specializing in terminal illnesses should be aware of these firms and may provide referrals.

## **WHAT PAPERWORK IS INVOLVED IN A VIATICAL SETTLEMENT?**

Employees/annuitants first need to contact a VSF. They will need to sign a release (provided by the firm) that will allow their personnel office or retirement system to provide information on their FEGLI coverage to the VSF. Personnel office/retirement system staff cannot provide information directly to any VSF without a release from the employee or annuitant.

Once a written release signed by the employee or annuitant is received, personnel office/retirement system staff may provide the information requested by the VSF. VSFs cannot tell employees or annuitants how much they will pay until they know the details of the employee or annuitant's coverage. Therefore, it is important for personnel office/retirement system staff to provide this information in a timely manner.

Some sample data items that may be requested are:

### **GROUP POLICY NUMBER:**

#17000-G with the Metropolitan Life Insurance Company

### **CERTIFICATE NUMBER:**

There is no "certificate number" for FEGLI insurance. You can provide the employee or annuitant's social security number if the SSN is an item on the release form signed by the employee or annuitant.

### **PROVIDE A COPY OF THE ENROLLEE'S GROUP CERTIFICATE:**

The employee or annuitant's certificate of insurance is a copy of his/her most recent SF 2817 along with a copy of the FEGLI booklet

### **PROVIDE THE TOTAL DEATH BENEFIT:**

This is an estimate of the employee or annuitant's death benefit (amount of their basic coverage plus any optional coverage). For annuitants, details about the post-65 reduction schedule of each of their coverages (Basic and Option A and Option C, if applicable) should be provided. A copy of the FEGLI booklet should also be provided, with the details about the extra benefit, if applicable, highlighted.

**IS THERE A WAITING PERIOD BEFORE THE ENROLLEE CAN  
ASSIGN HIS/HER INSURANCE?**

The effective date of the employee's or annuitant's coverage can be provided along with an explanation that assignment became available to all enrollees on October 3, 1994, and that all enrollees are immediately able to assign their coverage with no "waiting period."

**WHAT IS THE MONTHLY PREMIUM?**

Provide the monthly premium.

**DOES THIS POLICY HAVE ACCELERATED BENEFITS?**

Yes, as of July 25, 1995.

**IS PARTIAL ACCELERATION PERMITTED?**

Yes for employees, no for annuitants. Employees can elect to accelerate (that is, elect FEGLI living benefits on) all or a portion of their basic life insurance. Annuitants can only elect full living benefits. However, if employees or annuitants assign their insurance, they cannot elect accelerated (living) benefits.

**CAN THE FIRM PAY THE PREMIUMS?**

No. Premiums must continue to be withheld from the employee's salary or the annuitant's annuity. Employees and annuitants cannot cancel these premiums. Employees or annuitants who assign their insurance to a VSF may attempt to negotiate with the VSF to receive a lump sum payment equal to the total amount of the premiums that will be withheld from salary/annuity during the employee/annuitant's remaining life. This is a private negotiation between the employee/annuitant and the VSF.

**ARE THERE ANY ASSIGNMENTS AGAINST THE POLICY?**

Verify that the employee or annuitant has not previously assigned his/her insurance. The employee or annuitant can only assign his/her insurance once and it is irrevocable.

**DOES THE POLICY INCLUDE A DISABILITY WAIVER?**

No.

**CAN THIS POLICY BE CONVERTED IN CASE OF TERMINATION BY  
THE OWNER?**

The insured or the assignee cannot convert the group coverage when it is canceled voluntarily by the employee or annuitant, nor, if the coverage has been assigned, by the assignee.



**ARE THERE OTHER EVENTS THAT WOULD TRIGGER CONVERSION  
BY THE FIRM?**

Yes. If the employee quits employment or retires and the policy has been assigned, the assignee (in this case, the VSF) can convert the policy to a private one. Annuitants had a conversion privilege when they retired -- there is no other opportunity to convert their coverage.

**IS THERE A MINIMUM AMOUNT OF COVERAGE REQUIRED TO  
OBTAIN ASSIGNMENT?**

No.

**DOES THE ABSOLUTE ASSIGNMENT GRANT RIGHTS TO THE  
ASSIGNEE TO CONVERT TO AN INDIVIDUAL POLICY?**

Yes, if the employee quits employment or retires. No for an annuitant.

**CAN AN IRREVOCABLE BENEFICIARY BE DESIGNATED?**

No. Designations are revocable. However, assignments are irrevocable. If the employee or annuitant assigns his/her insurance, all current designations are void. The assignee automatically becomes the beneficiary and is free to designate whomever he/she chooses. If he or she doesn't designate anyone, then the assignee is the beneficiary.

You will also likely be asked for assignment and designation of beneficiary forms. You should provide a blank copy of each form to the firm.

If the employee or annuitant chooses to make an assignment, he/she will need to complete an RI 76-10 assignment form and indicate the name of the VSF in the space provided for the assignee. The employee should sign the form, have his/her signature witnessed in writing by two people, and return the form to his/her employing office or retirement system. The assignment is effective on the day that a properly completed form is received in the employing office, for employees, or the retirement system, for annuitants.

Other information concerning assignment is contained on the form.

The chart on the following page summarizes the differences between Living Benefits and Assignment.

	<b>Viatical Settlement Agreement</b>	<b>FEGLI Living Benefit</b>
Earliest Date Available	October 3, 1994 (for all enrollees)	July 25, 1995
Life Expectancy Requirement	Varies by VSF	9 months or less
Insurance Involved	100% of Basic, Option A and Option B (if held) (100% must be assigned, although not necessarily all to the same person/firm)	100% of Basic (employees and annuitants)  Part of Basic (employees only - must be a multiple of \$1,000)
Percentage Of Face Value Paid to Employee/Annuitant	60 to 85 percent  The percentage varies, and is negotiated with the Viatical Settlement Firm (VSF)	94 percent (approximately)
Source Of Payment	VSF to whom benefits are assigned (sold)	FEGLI Program
Residual Life Insurance Benefit	None, unless the VSF agrees to accept only a percentage of the assignment or to designate a portion to a survivor	Option A and Option B, if held.  Remaining Basic for employees who elect partial Living Benefits
Payment of Premiums	Employee or annuitant continues to pay full premiums and cannot cancel the premiums.  VSF may agree to reimburse the employee/annuitant directly for premiums paid	Premium payments for Basic end for annuitant and employees who elect a full Living Benefit.  For employees who elect partial Living Benefits, premiums are prorated depending on the amount of Basic remaining.